

HONOURABLE SHRI JUSTICE R.SUBHASH REDDY

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WRIT PETITION No. 9955 OF 2006

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Dated 14th July, 2006

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Between:

J.Surendra S/o Ramanaiah

... Petitioner

AND

Duvvuru Ramanamma Women's Degree College,
Gudur, Nellore District, represented by its
Secretary & Correspondent Dr.C.R.Reddy
and others.

... Respondents.

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ORDER:

This writ petition is filed seeking a writ of mandamus to declare the action of the respondents 1 and 2 in not implementing the orders of the Regional Joint Director of Collegiate Education dated 3.5.2006 as arbitrary and illegal and further questioning the order dated 21.1.2006 passed by the management of the first respondent-degree college.

The petitioner is a Record Assistant working in Duvvuru Ramanamma Women's Degree College, Gudur, an aided institution, governed by the provisions of Andhra Pradesh Education Act, 1982. Alleging certain misconduct on the part of the petitioner, primarily, on the ground that he was unauthorisedly absent on two different occasions, disciplinary proceedings were initiated and he was placed under suspension pending enquiry by the Secretary and Correspondent of the college by proceedings dated 24.2.2006 in R.C.No.10/Estt./2006. Again by orders dated 24.4.2006, the period of suspension was extended for a further period of two months. Thereafter, on the ground that the petitioner having been placed under suspension, enquiry was not completed within the prescribed time, the Regional Joint Director of Collegiate Education, Guntur, through proceedings in Rc.No.619-A/2006 dated 3-5-2006 ordered revocation of the suspension and for reinstatement of the petitioner as Record Assistant, holding that the orders passed by the Correspondent extending the period of suspension by his proceedings dated 24.4.2006 are against the provisions of the A.P. Education Act. Subsequently, the Secretary and Correspondent of the College has issued notice dated 17.5.2006 to show cause why

his services should not be terminated in view of the charges framed in the proceedings dated 21.1.2006.

It is the case of the petitioner that in spite of the orders of reinstatement passed by the Regional Joint Director, Education Department on 3.5.2006, the management has not implemented the said order by reinstating the petitioner, without assigning any reasons. The petitioner also questioned the charge memo dated 21.1.2006 and further notice dated 17.5.2006. By proceedings dated 21.1.2006, charges of absence from duty without prior permission, neglect of duties and insubordination, were framed and explanation was sought from the petitioner for the said charges. Notice dated 17.5.2006 was issued calling for explanation from the petitioner as to why his services should not be terminated by referring to the enquiry proceedings.

It is submitted by Shri P.Venugopal, learned counsel for the petitioner that apart from the fact that without any valid reason respondents have not implemented the orders passed by the Regional Joint Director of Collegiate Education, they issued further noticed dated 17.5.2006 without any authority of law and jurisdiction and contrary to the provisions of Section 79 of the A.P. Education Act.

In the counter-affidavit filed on behalf of the respondents, it is stated that the petitioner was unauthorisedly absent for the period from 1.12.2003 and 28.3.2004 and again from 7.2.2005 to 7.4.2005 and on account of the misconduct, disciplinary proceedings were initiated and appropriate charges were framed. It is further stated that the enquiry committee has enquired into the matter and submitted its report and basing on the recommendation of the enquiry committee, further notice dated 17.5.2006 calling for explanation of the petitioner as to why his services should not be terminated, was issued. It is also stated that while it is true that prior approval from the competent authority is to be obtained before

imposing the punishment under Section 79 of the Education Act, but, inasmuch as it is only a notice calling for explanation from the incumbent, the same is not taken. So far as the reinstatement of the petitioner is concerned, it is stated that the respondents are willing to reinstate the petitioner. But, however, the petitioner himself is not attending the college to join in the post.

So far as the validity of order dated 21.1.2006 is concerned, it is a charge memo alleging misconduct against the petitioner and basing on the charge levelled against the petitioner, enquiry committee was constituted. Though petitioner was, initially, placed under suspension on 24.2.2006 and further orders of extension were passed in the month of April, 2006, but, however, the Regional Joint Director in his order dated 3.5.2006 set aside the order extending the period of suspension from 24.4.2006 and directed to reinstate the petitioner into duty immediately. Whereas it is the case of the petitioner that in spite of such a direction from the competent authority, management is not reinstating the petitioner and on the other hand it is stated in the counter affidavit that the petitioner is not attending on his own and they are prepared to reinstate. In that view of the petitioner, I permit the petitioner to report to duty and if he reports for duty, respondents are directed to allow the petitioner to join and continue in service.

But, so far as the proceedings dated 21.1.2006 and dated 17.5.2006 are concerned, I do not find any infirmity, which warrants interference by this court at this stage. While proceedings dated 21.1.2006 is a charge-memo, basing on which enquiry committee was constituted and enquiry report is filed, proceedings dated 17.5.2006 is a show cause notice after enquiry proposing punishment of termination of services. Though it is the case of the petitioner that based on the enquiry report, no action could have been taken by the management, but, however, the same is a matter which can be examined by the authority after considering the

explanation and the same is no ground to interdict the proceedings in this petition, at this stage. On filing explanation, it is for the management to consider the same in the light of the findings recorded by the enquiry committee. The other argument of the learned counsel is that the order dated 17.5.2006 was not preceded by the approval from the competent authority. Section 79 of A.P.Education Act stipulates that no order of dismissal or reduction in rank shall be passed against an employee of an educational institution without prior approval from the competent authority. But, in this case, proceedings dated 17.5.2006 is only a show-cause notice calling for explanation from the petitioner and is not an order. In that view of the matter, it was open for the respondents to issue such a notice.

For the aforesaid reasons, I dispose of the writ petition directing the respondents to allow the petitioner to discharge his functions as per the proceedings of the Regional Joint Director of Collegiate Education, dated 3.5.2006 and pay his salary for the period he has worked and continue to pay the same. Further, it is open for the respondents to proceed with the enquiry and pass appropriate orders in accordance with the provisions of A.P. Education Act and the other applicable rules.

No costs.

14.7.2006

REDDY, J.)

(R.SUBHASH

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